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McDonald's USA, LLC, a Joint Employer, et al. ***and*** **Fast Food Workers Committee and Service Employees International Union, CTW, CLC, et al.** Cases 02–CA–093893, et al., 04–CA–125567, et al., 13–CA–106490, et al., 20–CA–132103, et al., 25–CA–114819, et al., and 31–CA–127447, et al.

January 8, 2016

ORDER[1]

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA AND HIROZAWA

The requests for special permission to appeal the attached March 3, 2015 Case Management Order of Administrative Law Judge Lauren Esposito, filed by McDonald's USA, LLC (McDonald's) and the New York Franchisees (collectively, the Respondents), are granted. On the merits, the appeals are denied.[2] The Respondents have failed to establish that the judge abused her discretion in the Case Management Order.

Notwithstanding the concerns the Respondents raise concerning potential problems that could arise as a result of the Case Management Order, the Respondents have not met the heavy burden of establishing that the judge abused her discretion in issuing the Case Management Order. The judge carefully evaluated and weighed the arguments and properly exercised her authority to regulate the course of the hearing under the Board's Rules and Regulations and applicable case precedent. In this regard, the Case Management Order provides for an orderly presentation of evidence that helps to protect each Respondent's confidentiality and due process rights, as well as controlling the efficiency and costs of litigation for those individual businesses.

Our dissenting colleague reiterates his opposition to the General Counsel's consolidation of the complaints in this case. As we explained in *McDonald's USA, LLC*, 363 NLRB No. 91 (2016), the judge did not abuse her discretion in denying the Respondents' motions to sever.

Notwithstanding the denial of the motions to sever, our colleague faults the judge's Case Management Order for providing that the General Counsel and the Charging Parties present their evidence regarding the Respondents' joint-employer status before the evidence relating to the alleged unfair labor practices. We find his position unavailing. It is eminently reasonable, consistent with Board procedures, and well within the judge's discretion to order the parties to litigate the issue of joint-employer status prior to the alleged unfair labor practices.[3] The dissent cites no cases in which a judge has deferred evidence of joint-employer status until after the presentation of evidence on the unfair labor practice allegations. We see no reason why this case requires a different result.

Indeed, in the instant case, there are logical reasons for the judge ordering the General Counsel and the Charging Parties to present their joint-employer evidence first. That evidence is essential for determining whether Respondent McDonald's is a proper party to this proceeding. The judge's Order does not, as our colleague suggests, amount to imputing liability before finding that any violations have been committed. In addition, the evidence offered by the parties in litigating the joint-employer issue is potentially probative of the unfair labor practice allegations. Moreover, the judge reasonably concluded that litigating the unfair labor practice allegations first would be less efficient, more costly, and result in greater delay for all of the parties because of the heightened possibility that there would have to be two separate hearings in all three locations.

Our colleague further contends that the Order "provides for the Respondents to present corporate and nationwide 'joint-employer evidence' *before* the General Counsel has introduced evidence of alleged unfair labor practices attributed to the separate respondents." That is incorrect. The Order explicitly provides that the Respondents may wait to present their evidence on the joint-employer issue at the end of the proceeding, after the General Counsel and the Charging Parties have rested their cases with respect to the joint-employer issue and the unfair labor practice allegations. The dissent's lengthy discussion of this aspect of the Order boils down to faulting the judge for having the Respondents present their evidence on an issue after the General Counsel and the Charging Parties have presented all of their evidence on that same issue. This is far from extraordinary, and well within the judge's discretion.

[1] The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

[2] Respondent McDonald's and Respondent MaZT have separately filed requests for special permission to appeal other aspects of the judge's Case Management Order. These requests remain pending before the Board.

[3] To the extent the Respondents and our colleague argue that the merits of the unfair labor practice allegations should be fully adjudicated before the joint-employer issue, we note that it is neither unusual nor controversial for the judge to hear evidence on a joint-employer issue and unfair labor practice allegations at the same hearing and to decide both at the same time. See, e.g., *Hoot Winc, LLC*, 363 NLRB No. 2 (2015); *CNN America, Inc.*, 361 NLRB No. 47 (2014), motion for reconsideration denied, 362 NLRB No. 38 (2015), *Aldworth Co.*, 338 NLRB 137 (2002), enfd. sub nom. *Dunkin' Donuts Mid-Atlantic Distribution Center, Inc. v. NLRB*, 363 F.3d 437 (D.C. Cir. 2004).

Our colleague also objects to the Case Management Order's statement that parties and their counsel, including the Respondents, "'are encouraged' to consider making 'one presentation on behalf of all parties whose positions with respect to a particular issue are congruent.'" There is nothing exceptional, however, about a judge encouraging parties to confer regarding their presentation of evidence to streamline the hearing and reduce the unnecessary costs and delays that should be avoided whenever possible.

The dissent further contends that the Case Management Order diminishes the chances that separate respondents can fully participate in the entire hearing. But the Case Management Order clearly states that all franchisee-respondents may participate "to the extent that they desire to do so."[4] Our colleague's concerns, moreover, appear to be in tension with his position that the cases should not be consolidated.

Ultimately, our colleague is right that this proceeding is structured based on what the General Counsel hopes to prove and the Respondents seek to disprove: the allegations in the complaint. But that is true in every case that comes before us, consistent with due process. The judge structured the litigation in a manner that she determined would be most efficient and effective for allowing the General Counsel and the Charging Parties to present their cases and for the Respondents to mount their defenses. In doing so, the judge did not abuse her discretion. Accordingly, we deny the Respondents' appeals.

Dated, Washington, D.C. January 8, 2016

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER MISCIMARRA, dissenting.

This case involves an unprecedented consolidation of 61 unfair labor practice charges filed in six NLRB Regions (Regions 2, 4, 13, 20, 25 and 31) against 31 employers involving 181 alleged violations at 30 different workplace locations. Each of the 181 alleged violations is alleged to have been committed by a single separate respondent, and the 31 separate respondents are independent of one another with no operational interchange.[1] Therefore, the alleged violations turn on what happened to *particular* employees at a *particular* location operated by *one* of the separate respondents. Although McDonald's USA, LLC (McDonald's USA) is alleged to exercise sufficient control to qualify as an additional responsible "employer" based on the Board's joint-employer doctrine, there is no contention that McDonald's USA directly violated the Act. Thus, the General Counsel has indicated that "McDonald's—the alleged joint employer—is not accused of committing any ULPs in this proceeding."[2]

Presently pending is a request for special permission to appeal from several aspects of the judge's Case Management Order (Order) (dated March 3, 2015). At present, none of the merits has been decided, and neither my colleagues nor I prejudge them. However, we have addressed a succession of other procedural issues that have been appealed to the Board.[3]

One cannot envy anyone involved in this massive proceeding. However, two realities inescapably flow from

[4] In this regard, the dissent objects at length to several of the requests made by the General Counsel, particularly the request that the parties whose interests align—i.e., Charging Parties on one side, Respondents on the other—choose a lead or liaison counsel to act on behalf of other parties. However, the judge denied those requests, and they are therefore not before us. Similarly, the dissent devotes substantial discussion to rulings that the judge did not make, but might possibly make in the future. As relevant to the present appeal, the issue is much simpler: The judge acted well within her discretion to seek to insure the orderly presentation of evidence on a contentious issue common to all of the Respondents.

[1] There are 32 respondents, including McDonald's USA, LLC. Of these, 30 are franchisees operating a McDonald's franchise restaurant. The remaining respondent is McDonald's Restaurants of Illinois, Inc., which is not alleged to be a franchisee of or a joint employer with McDonald's USA, LLC. I refer to the 30 franchisees plus McDonald's Restaurants of Illinois, Inc.—the 31 Respondents alleged to have committed unfair labor practices—as the "separate respondents."

[2] General Counsel's Opposition to the New York Franchisees' Requests for Special Permission to Appeal the ALJ's Order Denying Their Motions to Sever and Portions of her Case Management Order, p. 3 (dated April 9, 2015).

[3] One appeal stemmed from the judge's denial of a request to have a transcript of a telephonic scheduling conference that, as described by the judge, was to address the "manner and time frame for the production . . . of documents and electronically stored information," which had been subpoenaed by the General Counsel. *Lewis Foods of 42nd Street, LLC*, 362 NLRB No. 132 (2015). In another appeal, the Board denied McDonald's USA's motion for a bill of particulars regarding a new, more expansive theory of "joint employer" status about which the consolidated complaints are silent. *McDonald's USA, LLC*, 362 NLRB No. 168 (2015). In a third appeal, McDonald's filed a motion to sever based on a contention that litigating in a single consolidated case all 181 alleged violations, asserted against 31 separate respondents and McDonald's USA, constituted a violation of due process rights and was otherwise an abuse of discretion; the Board also denied this motion. *McDonald's USA, LLC*, 363 NLRB No. 91 (2016). I dissented from all three Board decisions (as did Member Johnson in the two decisions in which he participated). Further prehearing matters remain pending before the Board.

this litigation. First, as expressed in my dissenting opinion regarding the Respondents' motion to sever,[4] I believe the parties and claims are too numerous and dissimilar to be thrown into a single case, and the structure of this litigation will impose oppressive costs, burdens, and delays on the parties, the Board, and reviewing courts. Second, the Board's failure to acknowledge the ill-advised nature of this enormous consolidation places the judge and the parties in the impossible position of trying to find some way to litigate these diverse claims involving dozens of different parties in a single proceeding.

Now, as this train departs for an extended journey, we are discarding decades of Board experience adjudicating these types of claims in a conventional way. Instead, we are substituting entirely new procedures that—rather than fostering fairness and avoiding undue burdens on private party-litigants—have two primary purposes: (i) to forge ahead with a single consolidated case regardless of its epic proportions; and (ii) to facilitate the General Counsel's effort to impose liability on McDonald's USA for whatever ULPs are proven to have occurred. Unfortunately, the Case Management Order accomplishes these objectives by disfavoring the separate respondents and unfairly diminishing their ability to fully participate in relevant proceedings. For example, the Case Management Order inverts the order of evidence by addressing first the question of *who* shall be liable, before *any* evidence is presented regarding whether anyone has violated the Act. Yet, the Case Management Order affords exceptional deference to the General Counsel's attorneys, who (among other things) have argued that the separate respondents do not even have due process rights regarding joint-employer issues. The General Counsel's attorneys have gone so far as to argue the separate respondents should be *denied the right of representation by counsel of their own choosing*, and pointedly, the Case Management Order refuses to rule out this possibility. Ironically, the General Counsel's attorneys have convinced the judge and a Board majority that this case should proceed as an integrated whole, but the Case Management Order splinters the hearings into three counterintuitive phases (with phase one hearings to occur in Manhattan, phase two in Chicago, and phase three in Los Angeles). At each location, the hearings will be subdivided further. Under the Case Management Order, one objective trumps everything else: to get through the mechanics of creating some type of record notwithstanding the unmanageable size of this litigation and its dissonant parts.

In my view, the structure of this litigation, including the Case Management Order, is ill-advised, and I would sustain the objections raised by the Respondents to the Case Management Order for several reasons.

First, as explained in my dissent from the Board's denial of the motion to sever filed by the Respondents,[5] the Board is making an unfortunate decision to permit this colossal litigation to continue in its present form. I have no doubt that my colleagues and the judge, like the General Counsel, believe the pursuit of this consolidated case will effectuate the purposes of the Act and reduce certain costs and delays. However, their reasoning is contradicted by nearly everything associated with the Board's experience litigating these types of cases, especially alleged joint-employer violations, and even by the short history of this litigation itself. The extraordinary consolidation of these divergent parties and claims in a single proceeding, rather than avoiding unnecessary costs or delay, will inescapably impose overwhelming burdens, unfairness, and much greater costs *and* delays on the Board, on the parties, and on any subsequent reviewing courts. Moreover, as I observed previously:

> [T]here is a troubling circularity to the rationale supporting consolidation. The General Counsel *hopes to prove* that one entity—McDonald's USA—is a "joint employer" in its dealings with 30 franchisee-respondents, and this not-yet-proven contention is the premise for aggregating 181 dissimilar claims and 31 respondents—the 30 franchisees plus McDonald's Restaurants of Illinois, Inc.—that have no relationship with one another except for the fact that they operate McDonald's restaurants. But the fact that each of the franchisee respondents has dealings with a common franchisor (McDonald's USA) does not justify enmeshing them in one another's labor and employment disputes. To the contrary, this is precisely what our statute protects against, because Section 8(b)(4)(B) protects neutral employers, including franchisees, from being embroiled in a dispute just because they do business with a common franchisor.[6]

My second point relates more directly to the Case Management Order, which reflects an attempt to reconcile the large number of disparate parties and claims with

[4] See *McDonald's USA, LLC*, 363 NLRB No. 91, slip op. at 2 (Member Miscimarra, dissenting).

[5] *McDonald's USA, LLC*, 363 NLRB No. 91, slip op. at 2 (Member Miscimarra, dissenting).

[6] *McDonald's USA, LLC*, 363 NLRB No. 91, slip op. at 6 (Member Miscimarra, dissenting) (emphasis in original) (citing *Teamsters Local 456 (Carvel Corporation),* 273 NLRB 516, 520 (1984) (Carvel ice cream franchisee protected from coercion based on a dispute involving Carvel, the franchisor, even though "mutual interdependence, necessary for the economic survival of both parties, is characteristic of franchise operations")).

"the overarching nature of the General Counsel's theories."[7] The consolidation of unconnected respondents and claims already creates substantial risks that the separate respondents will experience prejudice, denials of due process, protracted delays, and immense costs that would not have existed if these cases were litigated separately in a conventional manner. Rather than recognizing and attempting to offset these risks, the Case Management Order goes in the other direction and exhibits even *greater* deference to the General Counsel while further increasing the ways that the separate respondents are likely to be disadvantaged by the structure of this litigation.

The portion of the Case Management Order addressing the presentation of evidence states:

> **Presentation of the case:** The hearing in this case will take place in three phases, with adjournments between each phase. The first phase will take place in Manhattan, the second phase in Chicago, and the third phase in Los Angeles. The first phase, in Manhattan, will begin with *corporate or nationwide evidence pertinent to the joint employer allegations*, and will continue with *evidence of joint employer status* and *evidence regarding the specific violations allegedly committed at the franchisee locations in New York City and Philadelphia*. The second and third phases will involve the presentation of evidence of joint employer status and evidence regarding the specific violations allegedly committed at the franchisee locations in the midwest and California, respectively.
>
> At the opening of the hearing on March 30, 2015, I will hear any oral argument necessary on the parties' Petitions to Revoke Subpoenas, and issue rulings. The hearing will then adjourn until May 11, 2015 to allow for the production of any documents and electronically stored information and adjudication of any claims of privilege. . . .
>
> When the hearing resumes, *General Counsel will present evidence applicable on a corporate or nationwide basis pertaining to the alleged joint employer status of McDonald's USA, LLC ("McDonald's")* with the Respondent franchisees. *Charging Parties will then present their evidence applicable on a corporate or nationwide basis regarding the alleged joint employer relationships*. General Counsel has indicated that *while evidence applicable on a corporate or nationwide basis will comprise a substantial component of the overall evidence with respect to the alleged joint employer relationship, they also intend to present evidence to establish joint employer status involving individual franchisee Respondents, possibly in all three hearing locations*. As a result, after General Counsel (and Charging Parties) present evidence of joint employer status applicable on a corporate or nationwide basis, *McDonald's and the franchisee Respondents will have the option to either proceed with their own evidence applicable on a corporate or nationwide basis regarding the joint employer issue, or wait to present this evidence until General Counsel and Charging Parties rest their cases with respect to the joint employer issue entirely. McDonald's and the franchisee Respondents will be required to confer and jointly choose one of the foregoing options, applicable to all Respondents. All presentations of joint employer status evidence applicable on a corporate or nationwide basis will take place in Manhattan*.
>
> After General Counsel and Charging Parties' presentation of evidence applicable on a corporate or nationwide basis concludes, *General Counsel will then present evidence specific to the franchisee Respondents located in New York City and Philadelphia*. General Counsel will present all *evidence with respect to each specific franchisee in turn, including evidence pertinent to the joint employer issue and evidence relevant [to] the alleged violations*. General Counsel will then rest their case with respect to that particular franchisee. *Charging Parties will then present all of their evidence with respect to the franchisee, in the same manner. McDonald's and the franchisee Respondent will then present any evidence specific to the franchisee, including both evidence regarding joint employer status and evidence in defense of the unfair labor practice allegations*. General Counsel will prepare a schedule for the presentation of franchisee evidence—including the order and anticipated dates of franchisee evidence to be presented—in consultation with counsel for the franchisee Respondents in order to ensure an efficient presentation of evidence and minimize the burden on the franchisee Respondents.
>
> Parties and their counsel are *encouraged but not required to confer regarding the presentation of evidence, including the questioning of witnesses and any evidentiary argument, and to make one presentation on behalf of all parties whose positions with respect to a particular issue are congruent*. This could include *having one attorney present a position or question a witness on behalf of several parties, where their positions coincide*, if the parties so de-

[7] Order Denying Respondents' Motions to Sever, p. 6 (Feb. 20, 2015).

sire. A diligent effort to cooperate will conserve parties' resources and result in a more efficient case presentation.

Presentation of the evidence in Chicago and Los Angeles will proceed in the same manner as the presentation of the evidence involving the franchisees in New York City. After General Counsel rests its case regarding joint employer status, McDonald's and the franchisee Respondents will have the opportunity to present evidence applicable on a corporate or nationwide basis with respect to this issue, if they have not already done so.

Notice to parties regarding the presentation of evidence: In order to proceed in this manner, parties must have adequate information and sufficient advance notice to *allow them to participate in the hearing to the extent that they desire to do so*. Therefore, General Counsel will provide the franchisee Respondents and the Charging Parties with specific information regarding the presentation of *evidence pertaining to the alleged joint employer status of McDonald's and the Respondent franchisees, including the identities of witnesses and dates of their testimony*. General Counsel will provide such information regarding joint employer evidence to be presented both during the phase of the hearing addressing evidence applicable on a corporate or nationwide basis, and when evidence regarding joint employer status will be presented in the context of the cases involving the individual franchisee Respondents. *General Counsel will provide this information sufficiently in advance of the presentation of evidence to allow for parties wishing to participate in the hearing by videoconference to do so*. McDonald's and the franchisee Respondents will provide such information regarding their case presentations to the Charging Parties in a similar manner.[8]

Undoubtedly, questions about joint-employer status are important. However, before one gets to the "overarching nature" of the General Counsel's theories, the central question should be whether *any* respondent committed one or more of the 181 alleged violations encompassed within the 61 charges in this case that were investigated within six different NLRB Regions. As I stated previously:

> [T]he present consolidation assembles disparate claims and parties into a single massive proceeding based on alleged common elements that have yet to be proven and may never be proven. Necessarily, the litigation's structure, which is premised on what the General Counsel hopes to prove, will tend to emphasize those elements that each franchisee has in common with McDonald's USA, and it will tend to deemphasize evidence of differences, exceptions and explanations—presuming that each franchisee-respondent will have the resources needed to participate, with representation by counsel, in hearings to be held in multiple locations across the country that will likely take years to complete.[9]

I recognize that the General Counsel and his hard-working attorneys are endeavoring to give force and effect to our statute, which creates important rights and obligations for employees, unions, and employers throughout the country.[10] However, important aspects of the Case Management Order and various positions taken by the General Counsel are surprising and objectionable:

- *The Separation Between "Joint Employer" Evidence and Evidence of Alleged ULPs*. The Case Management Order takes as its basic premise a demarcation between joint-employer evidence and "evidence relevant [to] the alleged violations."[11] However, it appears clear that this dichotomy will substantially break down during the hearing, and the General Counsel has already stated that "evidence adduced in all phases of the proceeding may bear on the joint employer analysis."[12]
- *Requiring "Joint Employer" Evidence First*. As noted above, the Order provides for the Respondents to present corporate and nationwide "joint-employer evidence" *before* the General Counsel has introduced evidence of alleged unfair labor practices attributed to the separate respondents, with at most a limited deferral (if agreed upon by all respondents)

[8] Case Management Order, pp. 6–8 (March 3, 2015) (internal footnotes omitted; emphasis added, page numbers refer to pages in order as issued by the judge).

[9] *McDonald's USA, LLC*, 363 NLRB No. 91, slip op. at 6 (Member Miscimarra, dissenting).

[10] In *McDonald's USA, LLC*, 363 NLRB No. 91, slip op. at 3, I stated: "The Board does important work enforcing a statute that creates important rights and obligations for employees, unions and employers throughout the country. In this case, the General Counsel and his hard-working attorneys are endeavoring to give force and effect to our statute's provisions. I respect and commend their work. Without their efforts, the Act would be an empty vessel that would poorly serve parties who should benefit from every ounce of protection that is available under our statute."

[11] Case Management Order, pp. 6–7.

[12] General Counsel's Opposition to the New York Franchisees' Requests for Special Permission to Appeal the ALJ's Order Denying Their Motions to Sever and Portions of her Case Management Order, p. 3 (dated April 9, 2015).

until the General Counsel and Charging Parties rest their entire "joint employer" case. In any event, the Order operates to the advantage of the General Counsel (who already has the benefit of all the information uncovered during pre-complaint investigations conducted by attorneys in six NLRB Regions) and to the detriment of the Respondents (who must put on their joint-employer case without having seen evidence regarding some or all of the specific violations alleged to be the basis for joint-employer liability).[13]

- *Potential Denial of Respondents' Right to Representation by Their Own Counsel*. The General Counsel has argued that individual Respondents should be denied the right to have separate representation by counsel of their own choosing. The General Counsel has likewise argued for a requirement that the Respondents be required to file "joint page-limited motions" (instead of separate motions as each respondent deems appropriate). Significantly, the judge, though denying these requests for the time being, has preserved the possibility that she may deny respondents these basic rights if it "becomes necessary."[14]
- *Respondents "Encouraged" to Forego Active Participation*. Although the Respondents are not presently "required" to relinquish their right to participation with their own counsel, the Case Management Order states the Respondents "are encouraged" to consider making "one presentation on behalf of all parties whose positions with respect to a particular issue are congruent," which "could include having one attorney present a position or question a witness on behalf of several parties, where their positions coincide." Although phrased in voluntary terms, the Respondents face considerable peril if they exercise their right to have separate participation by their own counsel. All Respondents undoubtedly realize that the judge—who has "encouraged" the parties to dispense with separate representation—will decide every issue in the case, including evidentiary rulings, the potential exclusion of "cumulative" evidence, and the merits. Moreover, the Case Management Order, as noted above, leaves open the possibility that the judge may deem it "necessary" to deny parties the right to representation by their own counsel.
- *Importance of Evidence Specific to Individual Respondents*. The General Counsel argued for "a general evidentiary presumption that the evidence of joint employer status applicable on a corporate or nationwide basis applies to each individual franchisee absent new evidence to the contrary presented by that franchisee."[15] Although the judge denied this request for a "presumption" of joint-employer status, this emphasizes the likelihood that each separate respondent will need to introduce evidence of dissimilarities and exceptions to McDonald's corporate or nationwide policies to rebut alleged joint-employer status.
- *Potential Non-Participation by Respondents*. Another premise of the Case Management Order is the notion that separate respondents may not "desire" to "participate in the hearing."[16] In conventional Board litigation, the prospect that a respondent hoping to mount a defense will *not* participate in the hearing is

[13] My colleagues erroneously state that the Case Management Order "explicitly provides that the Respondents may wait to present their evidence on the joint-employer issue *at the end of the proceeding,* after the General Counsel and the Charging Parties *have rested their cases* with respect to the joint-employer issue *and the unfair labor practice allegations*" (emphasis added). I believe this interpretation of the Case Management Order is incorrect. See text accompanying fn. 27, infra.

[14] The judge's Case Management Order (dated March 3, 2015) states that the General Counsel requested that the judge "require parties to choose a lead or liaison counsel to act on behalf of other parties" and "require parties to file joint page-limited motions." Even though the judge observed these limitations would "circumscribe the prerogatives of the parties in terms of their choice of representative and the presentation of their positions," the Case Management Order states that "[s]uch limitations . . . will not be imposed *unless it becomes necessary*." Case Management Order fn. 1 (emphasis added).

[15] Case Management Order, p. 7 fn. 3.

[16] The General Counsel has clearly stated that he intends "to present evidence to establish joint employer status involving individual franchisee respondents, *possibly in all three hearing locations*" (Order, p. 6) (emphasis added), and that "evidence adduced *in all phases of the proceeding* may bear on the joint employer analysis," General Counsel's Opposition to the New York Franchisees' Requests for Special Permission to Appeal the ALJ's Order Denying Their Motions to Sever and Portions of her Case Management Order, p. 3 (dated April 9, 2015) (emphasis added). Nonetheless, the Case Management Order presumes that separate respondents will not participate in the entire hearing. See, e.g., Case Management Order, p. 7 (the General Counsel must provide information including the identities of witnesses and dates of their testimony so parties can "participate in the hearing to the extent that they desire to do so"); id. pp. 6–7 (providing for the disclosure of information sufficiently in advance "to allow for parties wishing to participate in the hearing by videoconference to do so").

almost unthinkable. However, given the enormity of this proceeding, the opposite is true: *participation* in the entire hearing by the separate respondents is difficult to fathom given that the hearing may last hundreds of days and this consolidated litigation may easily span 10 to 15 years or more.

- *All Respondents Limited to a Single "Option" Regarding Joint-Employer Evidence*. The Case Management Order not only requires the presentation of evidence regarding joint-employer status first (before any evidence addresses whether any violations occurred), the Order bifurcates the joint-employer evidence into two stages, the first stage dealing with joint-employer evidence "applicable on a corporate or nationwide basis," and the second dealing with the alleged "joint employer status involving individual franchisee Respondents." Although McDonald's USA and the separate Respondents have the option to decide whether to present their joint-employer evidence between these two stages or when the General Counsel (and the charging parties) "rest their cases with respect to the joint employer issue entirely," the judge has ordered "McDonald's and the franchisee Respondents . . . to confer and jointly choose *one* of the foregoing options, *applicable to all Respondents*."[17] Likewise, as noted above, the Case Management Order provides for the respondents to present their corporate or nationwide joint-employer evidence before some or all of the General Counsel's evidence has been introduced regarding what alleged violations of the Act have been committed.[18]

Above all else, I am troubled by the dismissive treatment that is being afforded to the role and participation of the separate respondents. The separate respondents—*not* McDonald's USA—are the parties that allegedly have engaged in the unfair labor practices at issue in this proceeding.[19] Section 101.10 of the Board's Rules and Regulations, "Hearings," states that "*all parties* to the proceeding . . . have the power to call, examine, and cross-examine witnesses and to introduce evidence into the record" (emphasis added). But to exercise that "power" in this immense consolidation of unrelated claims and parties, each separate respondent will incur, as the price for participation, potentially ruinous legal fees and expenses. Again, the Case Management Order unavoidably leaves the impression that participation by the separate respondents, which is their right under Board Rules Section 101.10, is expendable and subordinate to what the General Counsel hopes to prove—i.e., the joint liability of McDonald's USA.

The General Counsel's representatives have gone so far as to blame the Respondents for costs and burdens associated with their participation in a three-phase cross-country hearing because (to borrow their words) "nothing in the judge's orders *requires* them to do so."[20] The General Counsel's attorneys even argue that the separate respondents have no interests that warrant *any* due process protection regarding the fundamental question of whether the Respondents and McDonald's USA are joint employers.

I find it hard to believe that any attorney representing the General Counsel would assert that parties in a Board proceeding lack due process rights regarding what the General Counsel has portrayed as the most important disputed issue in the case. Moreover, such a contention is obviously specious: a joint-employer finding would clearly have potentially far-reaching consequences for individual franchisee-respondents, potentially eliminating the franchisee's autonomy regarding some or all employment-related decisions, possibly invalidating important franchise agreement provisions or potentially undoing franchise arrangements involving millions of dollars in capital investment, preventing franchisees from making their own decisions in collective bargaining should their employees become union-represented, and eliminating secondary boycott protection that the Act would otherwise afford a franchisee in the absence of joint-employer status. Moreover, attorneys for the General Counsel have stated that "evidence adduced *in all phases of the proceeding* may bear on the joint employer analysis."[21] Nonetheless, the General Counsel's attorneys have exhibited disdain towards the possibility that separate respondents might want to participate in all phases of the litigation. For example, regarding the limited participation they would deem appropriate for the

[17] Case Management Order, p. 6.

[18] Details regarding this aspect of the Case Management Order are discussed in the text accompanying fn. 27, infra.

[19] The General Counsel, as noted previously, has conceded that "McDonald's—the alleged joint employer—is not accused of committing any ULPs" separate from violations attributed to the separate respondents. General Counsel's Opposition to the New York Franchisees' Requests for Special Permission to Appeal the ALJ's Order Denying Their Motions to Sever and Portions of her Case Management Order, p. 3 (dated April 9, 2015).

[20] Id. (emphasis in original).

[21] Id. (emphasis added).

New York franchisee-Respondents, the General Counsel's attorneys have stated:

> The New York Franchisees face liability for ULPs only to the extent they themselves committed the ULPs. To the extent they did not commit ULPs, they face no liability. Because McDonald's—the alleged joint employer—is not accused of committing any ULPs in this proceeding, the franchisees do not face the prospect in this proceeding of having to remedy any conduct by McDonald's. *The New York Franchisees therefore have no property interest at stake in that issue and thus cannot be deprived of due process*.
>
> Further, as should be obvious by now, the New York Franchisees are not alleged to be joint employers with other franchisees. Thus, any ULPs committed by other franchisees cannot be attributed to the New York Franchisees. *Given these facts, the New York Franchisees will be able to fully protect their interests by attending the New York phase of the trial only. If they choose to attend additional phases of the trial, that is their choice, but given their repeated claims of "gargantuan" burdens, it would seem a poor one.*[22]

In short, putting aside their patronizing and condescending tone, the attorneys representing the General Counsel contend that the problems in this litigation stem from the unreasonable desire of franchisee-respondents to participate fully in proceedings that have been brought against them. Only two parties deserve continuous representation in the mega-consolidated structure created by the General Counsel's attorneys: (i) the General Counsel's legal team (which already has the benefit of 61 investigations conducted by six NLRB Regions regarding 181 violations alleged to have been committed by 31 separate respondents), and (2) McDonald's USA (which is not even alleged to have committed *any* of the purported violations).[23] According to the advocates representing the General Counsel, the separate respondents should be relegated to worse-than-second-class status: their hapless attorneys should skip the other stages of the hearing altogether (those relating to joint-employer status, as to which the separate respondents supposedly do not even have "due process" rights), and any single attorney representing a separate respondent should settle for a guest appearance—possibly limited to a videoconference[24]—solely for the purpose of putting on evidence about the alleged violations pertaining to a particular franchisee-client. This type of limited participation would put any attorney (and the respondent he or she represents) at a severe disadvantage given the General Counsel's superior knowledge of the evidence already introduced, prior evidentiary rulings made by the judge, and evidence or potential defenses specific to McDonald's USA and other respondents that might otherwise be unknown to the attorney.

I would not address these arguments by the General Counsel if the Case Management Order ruled that this litigation will not abridge each separate respondent's right to participate fully at all stages by its own counsel. However, the Case Management Order pointedly does not reject this possibility, stating instead that it may be "necessary" to place restrictions on the role played by separate respondents and their counsel.

The Board's own recent experience with joint-employer issues demonstrates that concerns about process costs and protracted delays are not merely hypothetical. Last year, the Board decided another joint-employer case—*CNN America, Inc.*[25]—which only involved three entities and two locations. Yet, the *CNN* case required 10 years of Board litigation, 82 days of trial, more than 1300 exhibits, and more than 16,000 transcript pages. The claims against McDonalds USA and the separate respondents in the present consolidated case are many times greater and more diverse than those in *CNN*. Moreover, *CNN* involved the Board's traditional joint-employer principles, which were substantially changed by a Board majority in *BFI Newby Island Recyclery (Browning-Ferris)*, 362 NLRB No. 186 (2015), and the General Counsel has indicated the instant case is being litigated under *both* the traditional joint-employer principles predating *Browning-Ferris and* the changed joint-employer principles adopted by the Board in that decision.[26] The application of two different sets of joint-employer principles in the instant case will further complicate the litigation and increase the challenges that will confront the judge, the parties, the Board, and reviewing courts.

[22] Id., p. 4 (emphasis added).

[23] Id., p. 3 (dated April 9, 2015)

[24] I recognize that some costs associated with travel to distant hearing locations may be mitigated by the availability of potential participation by videoconference. However, in a separate request for special permission to appeal currently pending before the Board, McDonald's USA contends that videoconferencing procedures have not worked properly and have prejudiced the franchisee-respondents. I do not reach that issue here. Even assuming the videoconferencing arrangements work properly, any party or counsel whose participation is limited to videoconference will be at a disadvantage compared to other parties and attorneys who will be participating live in all stages of the hearing in the same room as the judge.

[25] 361 NLRB No. 47 (2014).

[26] *McDonald's USA, LLC*, 362 NLRB No. 168, slip op. at 2 fn. 1 (2015) (Members Miscimarra and Johnson, concurring in part and dissenting in part).

As a final matter, I disagree with my colleagues' contention that the Case Management Order permits the Respondents to defer their presentation of evidence regarding joint-employer status until "*the end of the proceeding*, after the General Counsel and the Charging Parties *have rested their cases* with respect to the joint-employer issue *and the unfair labor practice allegations*."[27] Here, my colleagues rely on the Order's requirement that, after the General Counsel and the Charging Parties have presented their corporate or nationwide joint-employer evidence, McDonald's and the separate respondents must jointly agree "to either proceed with their own evidence applicable on a corporate or nationwide basis regarding the joint employer issue, or wait to present this evidence until General Counsel and Charging Parties rest their cases with respect to the joint employer issue entirely." For several reasons, I believe the Case Management Order places the Respondents in the disadvantageous position of introducing some or all of their corporate and nationwide joint-employer evidence before understanding what evidence exists regarding the alleged ULPs in this case.

(a) Although the sentence relied upon by my colleagues purports to permit some deferral of the Respondents' corporate or nationwide joint-employer evidence, this is contradicted by the Order's statement (in the same paragraph) that "*[a]ll* presentations of joint employer status evidence applicable on a corporate or nationwide basis *will take place in Manhattan*."[28]

(b) The availability of any deferral "option" is rendered illusory by the Order's requirement that all respondents *jointly* make a single choice whether to *immediately* introduce all corporate or nationwide joint-employer evidence immediately after such evidence has been presented by the General Counsel and the Charging Parties, or to *defer* such evidence until the General Counsel and the Charging Parties have rested their joint-employer cases. Thus, the "option" of deferring the presentation of corporate or nationwide joint-employer evidence is not available to any respondent or group of respondents if other respondents insist on presenting their joint-employer defense immediately.

(c) The deferral "option" is illusory in another way. It leaves the General Counsel and the Charging Parties in complete control of when the Respondents must present their corporate or nationwide joint-employer evidence. The Order provides that, at the latest, the Respondents must present all their corporate or nationwide joint-employer evidence when the "General Counsel and Charging Parties rest their cases with respect to the joint employer issue entirely," and the General Counsel and the Charging Parties may rest their cases "with respect to the joint employer issue entirely" at any time during any hearing phase.[29]

(d) Regardless of what "option" may be jointly decided upon, the question of whether to defer joint-employer evidence presents the Respondents with a Hobson's choice. If the Respondents choose to present their corporate or nationwide joint-employer evidence immediately (after such evidence has been presented by the General Counsel and the Charging Parties), the Respondents will not know what evidence may be introduced regarding many or all of the ULP allegations at issue in this enormous case. Yet, if the Respondents choose to defer their corporate or nationwide joint-employer evidence (until the General Counsel and the Charging Parties have rested their cases "with respect to the joint employer issue entirely"), this could delay the Respondents' presentation of joint-employer evidence for an indefinite length of time, possibly spanning years, during which all interim case-related issues would be resolved by the judge or the Board based solely on joint-employer evidence presented by the General Counsel and the Charging Parties.

As reflected in the above discussion, the Case Management Order renders uncertain something as straightforward as what type of evidence must be presented when and by whom. If the General Counsel must introduce all evidence regarding alleged ULPs and joint-employer issues, and if this must be done before the Respondents will be required to present their own evidence, the Case Management Order could easily state this proposition directly, or the Board could impose this requirement in our disposition of the pending motion. Neither the Case Management Order nor my colleagues' opinion provides for the presentation of evidence in this straight-

[27] Majority opinion (emphasis added).

[28] Case Management Order, p. 6 (emphasis added). As noted previously, the Order provides for "three phases" of hearings, to be conducted in Manhattan, Chicago, and Los Angeles, respectively. Because the Order states that all corporate or nationwide joint-employer evidence "will take place in Manhattan," this would mean that the respondents must introduce their corporate or nationwide joint-employer evidence, at the latest, before the General Counsel has introduced *any* evidence regarding unfair labor practices allegedly committed by franchisees located in the Midwest and California. (Evidence regarding ULPs allegedly committed by Midwest and California respondents is reserved for the phase 2 and 3 hearings in Chicago and Los Angeles.)

[29] See Case Management Order, p. 6 ("General Counsel has indicated that while evidence applicable on a corporate or nationwide basis will comprise a substantial component of the overall evidence with respect to the alleged joint employer relationship, they also intend to present evidence to establish joint employer status involving individual franchisee Respondents, *possibly* in all three hearing locations.") (emphasis added).

forward manner. Instead, the judge has created made-to-order procedures largely built around specifications devised by the General Counsel, where (i) the joint-employer evidence takes precedence over whether or what types of alleged ULPs have been committed; (ii) the litigation requires the separate respondents to participate in lengthy Board proceedings, most of which will have little to do with the alleged violations attributed to each individual franchisee; (iii) each separate respondent will have a substantial incentive to abandon any defense or to forego any active participation in most or all proceedings; and (iv) the judge has reserved the right to deem it "necessary" to deny separate respondents their right to participate in this case using counsel of their own choosing.

The Board should demand more when it comes to the procedures governing our cases, especially when, as here, the cases at issue are likely to remain in litigation for many years. For the above reasons, I would sustain the Respondents' objections to the Case Management Order. Accordingly, I respectfully dissent.

Dated, Washington, D.C. January 8, 2016

Philip A. Miscimarra, Member

NATIONAL LABOR RELATIONS BOARD

CASE MANAGEMENT ORDER

Pursuant to the Motion for a Case Management Order filed by General Counsel, and the Oppositions and other positions submitted, the following procedures shall apply in connection with the pre-hearing period and the hearing of the above case.

Abbreviated Case Caption: All documents filed in this case may bear the abbreviated caption set forth below:

> **Lewis Foods of 42nd Street, LLC, A McDonald's Franchisee, and McDonald's USA, LLC, Joint Employers, et al.** ***and*** **Fast Food Workers Committee and Service Employees International Union, CTW, CLC, et al.** Cases 02–CA–093893, et al. 04–CA–125567, et al. 13–CA–106490, et al. 20–CA–132103, et al. 25–CA–114819, et al. 31–CA–127447, et al.

Communications with the Division of Judges: Counsel are to contact me by e-mail only in emergency situations, unless specifically authorized to do so. In non-emergency situations, counsel are to communicate with me by letter filed electronically. Counsel are directed not to send me e-mails with documents attached unless specifically authorized to do so by our office or required to do so pursuant to the NLRB Rules and Regulations. Documents sent to the Division of Judges' office by e-mail or other means will not be considered until they are electronically filed.

Petitions to Revoke Subpoenas and claims of privilege: Petitions to Revoke Subpoenas must be made within 5 days after the date of service of the subpoena, pursuant to Sections 102.31 and 102.111 of the Board's Rules and Regulations. Oppositions to Petitions to Revoke Subpoenas shall be filed within 5 days after the date of service of the Petition to Revoke in the same manner as the Petition to Revoke. Counsel representing more than one party are encouraged, to the extent practicable, to combine Petitions to Revoke and Oppositions on behalf of more than one party into one document.

Given the number of Petitions to Revoke Subpoenas, there will be no Reply papers. Parties filing Petitions to Revoke Subpoenas are directed to ensure that they electronically file both the Petition to Revoke and the Opposition.

Oral argument regarding Petitions to Revoke, to the extent necessary, shall take place when the hearing in this case opens in Manhattan on March 30, 2015. Prior to the opening of the hearing, the parties are directed to confer and begin discussions regarding the most efficient means for the production of documents and electronically stored information. A diligent effort to cooperate will conserve resources and enhance the efficiency of the process for all concerned.

Parties asserting that a ruling on a Petition to Revoke Subpoena requires the production of privileged material not subject to disclosure should prepare a privilege index log setting forth, for each such document: (i) a description of the document, including its subject matter and the purpose for which it was created; (ii) the date the document was created; (iii) the name and job title of the document's author; and (iv) to the extent applicable, the name and job title of the document's recipients. Any party seeking an *in camera* inspection of documents listed in another party's privilege index log shall submit a written request articulating specific grounds for an *in camera* inspection, establishing an adequate factual basis for a good-faith belief that an inspection may reveal materials not protected by the privilege.

Other pre-hearing motions: All prehearing motions, including requests for protective orders, shall be filed on or before March 13, 2015. All opposition papers shall be filed on or before March 20, 2015. Motions and Oppositions shall consist of no more than 20 pages. Counsel representing more than one franchisee Respondent are encouraged but not required to file one submission on behalf of all franchisee Respondents they represent, to the extent practicable. Charging Parties are likewise encouraged but not required to file one submission.[1] There will be no Reply papers, and no oral argument, unless the parties are specifically directed to do so.

Any party seeking a protective order should submit a written statement making a specific factual showing that disclo-

[1] General Counsel's request that I require parties to file joint page-limited motions is denied, as is his request that I require parties to choose a lead or liaison counsel to act on behalf of other parties. Such limitations, which circumscribe the prerogatives of the parties in terms of their choice of representative and the presentation of their positions, will not be imposed unless it becomes necessary.

sure of the materials in question would result in a clearly defined and serious injury. Counsel representing more than one franchisee Respondent are directed to file one submission with respect to any request for a protective order on behalf of all franchisee Respondents that they represent. Charging Parties are likewise directed to file one submission.

If it is determined that a protective order is necessary, a proposed protective order will be requested from the relevant party.

Presentation of the case: The hearing in this case will take place in three phases, with adjournments between each phase. The first phase will take place in Manhattan, the second phase in Chicago, and the third phase in Los Angeles. The first phase, in Manhattan, will begin with corporate or nationwide evidence pertinent to the joint employer allegations, and will continue with evidence of joint employer status and evidence regarding the specific violations allegedly committed at the franchisee locations in New York City and Philadelphia. The second and third phases will involve the presentation of evidence of joint employer status and evidence regarding the specific violations allegedly committed at the franchisee locations in the Midwest and California, respectively.[2]

At the opening of the hearing on March 30, 2015, I will hear any oral argument necessary on the parties' Petitions to Revoke Subpoenas, and issue rulings. The hearing will then adjourn until May 11, 2015 to allow for the production of any documents and electronically stored information and adjudication of any claims of privilege. The parties are specifically directed to confer during the initial adjournment in order [to] attempt to reach stipulations of fact, and stipulations regarding the authenticity and admissibility of documents and electronically stored information.

When the hearing resumes, General Counsel will present evidence applicable on a corporate or nationwide basis pertaining to the alleged joint employer status of McDonald's USA, LLC ("McDonald's") with the Respondent franchisees. Charging Parties will then present their evidence applicable on a corporate or nationwide basis regarding the alleged joint employer relationships. General Counsel has indicated that while evidence applicable on a corporate or nationwide basis will comprise a substantial component of the overall evidence with respect to the alleged joint employer relationship, they also intend to present evidence to establish joint employer status involving individual franchisee Respondents, possibly in all three hearing locations. As a result, after General Counsel (and Charging Parties) present evidence of joint employer status applicable on a corporate or nationwide basis, McDonald's and the franchisee Respondents will have the option to either proceed with their own evidence applicable on a corporate or nationwide basis regarding the joint employer issue, or wait to present this evidence until General Counsel and Charging Parties rest their cases with respect to the joint employer issue entirely. McDonald's and the franchisee Respondents will be required to confer and jointly choose one of the foregoing options, applicable to all Respondents. All presentations of joint employer status evidence applicable on a corporate or nationwide basis will take place in Manhattan.

After General Counsel and Charging Parties' presentation of evidence applicable on a corporate or nationwide basis concludes, General Counsel will then present evidence specific to the franchisee Respondents located in New York City and Philadelphia. General Counsel will present all evidence with respect to each specific franchisee in turn, including evidence pertinent to the joint employer issue and evidence relevant [to] the alleged violations. General Counsel will then rest their case with respect to that particular franchisee. Charging Parties will then present all of their evidence with respect to the franchisee, in the same manner. McDonald's and the franchisee Respondent will then present any evidence specific to the franchisee, including both evidence regarding joint- employer status and evidence in defense of the unfair labor practice allegations.[3] General Counsel will prepare a schedule for the presentation of franchisee evidence—including the order and anticipated dates of franchisee evidence to be presented—in consultation with counsel for the franchisee Respondents in order to ensure an efficient presentation of evidence and minimize the burden on the franchisee Respondents.

Parties and their counsel are encouraged but not required to confer regarding the presentation of evidence, including the questioning of witnesses and any evidentiary argument, and to make one presentation on behalf of all parties whose positions with respect to a particular issue are congruent. This could include having one attorney present a position or question a witness on behalf of several parties, where their positions coincide, if the parties so desire. A diligent effort to cooperate will conserve parties' resources and result in a more efficient case presentation.[4]

[2] The evidence regarding joint employer status applicable on a corporate or nationwide basis can be presented in one discrete portion of the hearing, likely involving one group of witnesses. I therefore find that hearing all of the evidence regarding the alleged violations at the franchisee locations throughout the country first, followed by the evidence regarding joint employer status, as suggested by Respondents, would ultimately be less efficient than the order of the presentation of evidence proposed by General Counsel. Respondents' suggested approach would likely result in holding two separate hearings in all three locations.

[3] General Counsel's request for a general evidentiary presumption that the evidence of joint employer status applicable on a corporate or nationwide basis applies to each individual franchisee absent new evidence to the contrary presented by that franchisee is denied. General Counsel bears the burden of proof with respect to the joint employer issue overall, and must support any contention that specific documents, practices or procedures are applicable on a corporate or nationwide basis.

[4] General Counsel's request that I require parties to designate one attorney to conduct cross-examination on their behalf, or preclude cross-examination by franchisee Respondents of other franchisee Respondents' witnesses, is denied. Such blanket measures would unduly restrict the rights of the franchisee Respondents in their cross-examination of witnesses and choice of counsel, and the possible presentation of cumulative evidence can be addressed as it arises.

Presentation of the evidence in Chicago and Los Angeles will proceed in the same manner as the presentation of the evidence involving the franchisees in New York City. After General Counsel rests its case regarding joint employer status, McDonald's and the franchisee Respondents will have the opportunity to present evidence applicable on a corporate or nationwide basis with respect to this issue, if they have not already done so.

Notice to parties regarding the presentation of evidence: In order to proceed in this manner, parties must have adequate information and sufficient advance notice to allow them to participate in the hearing to the extent that they desire to do so. Therefore, General Counsel will provide the franchisee Respondents and the Charging Parties with specific information regarding the presentation of evidence pertaining to the alleged joint employer status of McDonald's and the Respondent franchisees, including the identities of witnesses and dates of their testimony. General Counsel will provide such information regarding joint employer evidence to be presented both during the phase of the hearing addressing evidence applicable on a corporate or nationwide basis, and when evidence regarding joint employer status will be presented in the context of the cases involving the individual franchisee Respondents. General Counsel will provide this information sufficiently in advance of the presentation of evidence to allow for parties wishing to participate in the hearing by videoconference to do so. McDonald's and the franchisee Respondents will provide such information regarding their case presentations to the Charging Parties in a similar manner.

Hearing participation by videoconference: Counsel and parties wishing to participate in the hearing by videoconference shall give the General Counsel sufficient advance notice for the General Counsel to make the necessary arrangements. Counsel and parties will participate in the hearing by videoconference from the agency's Regional office closest to them, using agency equipment. General Counsel will test the videoconferencing equipment and ensure that it is in working order, and will provide a video technician to attend immediately to any technical difficulties which might arise. Cameras at both the hearing location and the Regional Office from which counsel will be participating by videoconference will be adjustable, in order to provide not only a close-up view of the witness and counsel but also a panoramic view of the entire hearing room. Counsel appearing by videoconference must be audible to the court reporter.

General Counsel will provide a set of exhibits at the Regional office where counsel will be participating by videoconference. In addition, counsel physically present at the hearing will provide counsel participating by videoconference with any additional exhibits not yet in the record that they will seek to use during the examination of the witness at the inception of the witness' testimony.

Hearing dates: As discussed above, the hearing will open at the offices of Region 2 in Manhattan on March 30, 2015. After oral argument, if any, and rulings on the Petitions to Revoke Subpoenas, the hearing will adjourn, and will resume at the offices of Region 2 on May 11, 2015. The hearing will continue the weeks of May 26, 2015, June 1, 2015, June 8, 2015, and June 15, 2015. Any additional hearing time necessary to complete the Manhattan phase of the case will be scheduled in the future.

Dated: New York, New York March 3, 2015

LAUREN ESPOSITO, Administrative Law Judge.